

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION,

Plaintiff,

v.

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Defendants.

Case No. 3:19-cv-00602-wmc

Judge William M. Conley
Magistrate Judge Stephen L. Crocker

ENBRIDGE ENERGY COMPANY, INC.,
and ENBRIDGE ENERGY, L.P.,

Counter-Plaintiffs,

v.

BAD RIVER BAND OF THE LAKE
SUPERIOR TRIBE OF CHIPPEWA
INDIANS OF THE BAD RIVER
RESERVATION and NAOMI TILLISON,
in her official capacity,

Counter-Defendants.

**BAD RIVER BAND’S UNOPPOSED MOTION TO CORRECT THE RECORD OF
ADMITTED EXHIBITS OF MAY 18, 2023 HEARING**

The Bad River Band moves to correct the record of exhibits admitted at the May 18, 2023 hearing in this matter. During that hearing, counsel for the Band misstated the exhibit number of Plaintiff's Exhibit 179 when offering it into evidence. The result is that a different exhibit—Plaintiff's Exhibit 180—has been inadvertently admitted instead.

Plaintiff's Exhibits 179 and 180 both discuss a change in Enbridge's policy on the use of helicopters near pipelines following an Enbridge accident on the Reservation in 2019. *See* Declaration of Ella Barzel ¶¶ 5–6 & Attach. A & B. During the May 18 hearing, counsel for the Band displayed Exhibit 179 to the Court, the witness, and opposing counsel on the courtroom monitors. Barzel Decl. ¶ 3. The Court reviewed Exhibit 179. *See* Tr. of Mot. Hr'g (Dkt. 670) at 156:1–2, 22–25. Counsel for the Band, however, misstated the exhibit number of that document, referencing Exhibit 180 instead, *see id.* at 155:1, though Exhibit 180 was never displayed during the hearing, Barzel Decl. ¶ 4. Nevertheless, relying on counsel's mistaken representation of the exhibit number of the document on the courtroom screens, the Court admitted Exhibit 180 (which it did not have before it) into evidence rather than Exhibit 179 (which it did). Dkt. 670 at 156:7–9.

After the Court admitted the document into evidence, the confusion became apparent and counsel for the Band, reading from Exhibit 180, *id.* at 156:18–23, apologized that “I think I’m in the wrong document,” *id.* at 157:3–4. Counsel failed to sufficiently clarify the record at the time. The Band moves to do so now. It asks the Court to substitute Exhibit 179—the exhibit that was before the Court, the witness, and opposing counsel—in evidence in place of Exhibit 180—which was not displayed during the hearing.

Counsel for the Band has conferred with counsel for Enbridge. Enbridge does not oppose this motion and agrees that a correction to replace Exhibit 179 for Exhibit 180 in the evidentiary record is appropriate.

Dated: June 6, 2023

Respectfully submitted,

Erick Arnold
BAD RIVER BAND OF THE LAKE SUPERIOR
TRIBE OF CHIPPEWA INDIANS OF THE BAD
RIVER RESERVATION
72682 Maple Street
Odanah, Wisconsin 54861
attorney@badriver-nsn.gov
(715) 682-7107

Bruce Wallace
HOOPER HATHAWAY PRICE BEUCHE
& WALLACE
126 S. Main Street
Ann Arbor, MI 48104
bwallace@hooperhathaway.com
(734) 662-4426

Oday Salim
NATIONAL WILDLIFE FEDERATION
213 West Liberty Street, Suite 200
Ann Arbor, MI 48104
salimo@nwf.org
(586) 255-8857

Douglas M. Poland
David P. Hollander
STAFFORD ROSENBAUM, LLP
222 W. Washington Avenue, Suite 900
Madison, WI 53701
dpoland@staffordlaw.com
dhollander@staffordlaw.com
(608) 256-0226

/s/ Riyaz A. Kanji
Riyaz A. Kanji
David A. Giampetroni
Lucy W. Braun
Christopher Miller
Joshua C. Handelsman
Joohwan Kim
KANJI & KATZEN, P.L.L.C.
303 Detroit Street, Suite 400
Ann Arbor, MI 48104
rkanji@kanjikatzen.com
(734) 769-5400

Jane G. Steadman
Philip H. Tinker
Claire R. Newman
KANJI & KATZEN, P.L.L.C.
811 1st Avenue, Suite 630
Seattle, WA 98104
jsteadman@kanjikatzen.com
(206) 344-8100

*Counsel for the Bad River Band of the Lake Superior
Tribe of Chippewa Indians and Naomi Tillison, Director
of the Mashkiiziibii Natural Resources Department of
the Bad River Band, in her official capacity*

CERTIFICATE OF SERVICE

I certify that on June 6, 2023, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Riyaz A. Kanji
Riyaz A. Kanji